



CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

OLC 74-1446/a

11 JUL 1974

Honorable John M. Ashbrook
House of Representatives
Washington, D. C. 20515

Dear Mr. Ashbrook:

This is in reply to your letter of June 25, 1974, requesting our views on H. R. 12471, which amends the Freedom of Information Act (5 U. S. C. 522).

Under existing law, this Agency's records are for the most part not available for public review because the Act specifically exempts certain information, including matters that are:

"(b)(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

[and]

(3) specifically exempted from disclosure by statute."

The provision in H. R. 12471 that most affects this Agency and other intelligence agencies is the overruling of the decision of the Supreme Court in *Environmental Protection Agency v. Mink*, 93 S. Ct. 827 (1973). The bill authorizes in camera court review of the content of records withheld under all of the exemptions in the Act to determine if the information withheld meets the criteria of the exemption involved. Under the Mink case ruling, records withheld under exemption (b)(1) are not reviewable by the courts. In effect, H. R. 12471 will allow the court to substitute its own judgment for that of the agency head in those cases where an exemption is claimed.

The National Security Act of 1947 provides:

"... That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;" (Sec. 102 (d)(3))

This language is designed to protect the lives and welfare of sources of sensitive foreign intelligence information, thus encouraging their providing information, and to protect against the compromise of technical collection efforts. In this regard, it is important to consider that some substantive intelligence, though not sensitive, may tend to reveal the intelligence sources and methods involved. Should H. R. 12471 become law, the Agency would be faced with the dilemma of having to reveal in court considerably more sensitive information to prove the sensitivity of the information in question.

The Senate Judiciary Committee recognized the concern of security agencies during its consideration of the Senate version of H. R. 12471 and the bill as reported out contained court review procedures for the in camera inspection of information excluded under exemption (b)(1). These procedures would have allowed the court to overrule an agency head decision only if the court found the decision was without a reasonable basis. Unfortunately, these procedures were struck during the Senate floor debate on the bill.

I strongly support the need for an informed public and endorse the principles of the Freedom of Information Act. I feel, however, that the nation's interest is not served by legislation which subjects sensitive Agency records to court review to force public disclosure as the result of a suit by an individual who may not even be a U. S. citizen and under review procedures which take no cognizance of the special expertise involved in matters of foreign intelligence. Accordingly, we oppose H. R. 12471 in its present form.

Your interest and concern in this matter are very much appreciated.

Sincerely,

/s/ W. E. Colby

W. E. Colby
Director

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For your signature. Reply to Representative Ashbrook in response to his request for our comments on H. R. 12471, which amends the Freedom of Information Act. You will recall, this is the bill which we worked out a compromise in Senate Judiciary Committee for court review procedures. They were dropped during Senate floor debate. The bill is now in conference and Ashbrook has indicated that he may vote against it. We will clear with OMB.

George L. Cary
Legislative Counsel

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